

## TRIBAL UNIFORM COMMERCIAL CODE

Ordinance # 01-800-01

### Section 1. Purpose; Findings

1.01. *Purpose.* The purpose of this Ordinance is to set forth the procedures regarding secured transactions relating to the Little River Casino Resort Expansion Project.

1.02. *Findings.* The Tribal Council, in adopting this Ordinance, makes the following findings –

- a. the Tribal Council has the delegated authority and responsibility to enact ordinances which govern contracts and agreements in order to protect the general welfare of the Little River Band as manifested in its property and other assets under Article IC, section 7(a) and (j) of the Constitution; and
- b. the Tribe is entering into financing agreements which require the identification of processes relating to creating, perfecting and enforcing security interests in collateral securing the financing agreements; and
- c. the Tribal Council has considered the development of a Uniform Commercial Code for the Tribe but has not yet begun the processes of developing that Ordinance; and
- d. the terms of the financing agreements for the Little River Casino Resort Expansion Project require the application of a Tribal Uniform Commercial Code (“Tribal UCC”) which is substantially similar to that adopted by the State of Michigan; and
- e. the Tribal Council finds that the adoption of a Tribal UCC based substantially on the State of Michigan’s UCC is a critical factor in the financing agreements such that failure to do so will result in an inability to complete the project as a result of being unable to secure financing; and
- f. the Tribal Council finds that adoption of a Tribal UCC derived substantially from the State of Michigan UCC, as amended by 2000 Public Act 348, for the specific and narrowly tailored purpose of the Little River Casino Resort Expansion Project financing, and no other purpose, is within its authority.

### Section 2. Adoption; Amendment; Repeal

2.01. *Adoption.* This Ordinance is adopted by the Tribal Council by Resolution# 01-0404-06.

2.02. *Amendment.* This Ordinance may be amended from time to time as set forth in the Constitution or in procedures adopted by the Tribal Council; provided that no such amendment shall impair the contractual rights of Lenders under the Financing Documents. Provided further, that any amendments to the State of Michigan Uniform Commercial Code adopted by the State of Michigan after adoption of this Ordinance shall not amend this Ordinance unless specifically adopted and incorporated by resolution of the Tribal Council.

### Section 3. Definitions.

3.01. *General.* For purposes of this Ordinance, certain terms are defined in this Section. The word “shall” is always mandatory and not merely advisory.

3.02. “*State UCC*” means the Uniform Commercial Code of the State of Michigan, as it now exists and may be amended, including without limitation by 2000 Public Act 348.

3.03. “*Financing Documents*” means a certain Taxable Construction Loan Agreement and a certain Non-Taxable Construction Loan Agreement between the Tribe and Miller & Schroeder Investments Corporation, as Servicer; the related Notes, Note Custody Agreement, Security Agreement, Depository Agreement and Disbursing Agreement; and all other related loan documentation and agreements, as such Agreements and loan documents may be executed and delivered by the Tribe.

3.04. “*Lenders*” means the lenders described in the Financing Documents.

3.05. “*UCC*” means the Uniform Commercial Code of the State of Michigan, as amended by 2000 Public Act 348 but excluding any subsequent amendments unless expressly adopted by the Tribal Council.

3.05. “*Tribal UCC*” means the Uniform Commercial Code of the State of Michigan, as amended by 2000 Public Act 348 and as amended and adopted by this Ordinance.

3.06. Terms defined in the Financing Documents and not defined in this Ordinance shall have the same meaning herein as therein.

#### **Section 4. Adoption of Uniform Commercial Code**

4.01. *Code.* The UCC is adopted as the law of the Little River Band of Ottawa Indians, subject to the modifications set forth herein. Provided further, that this adoption is limited to Articles 1 and 9 of the UCC, together with all definitions used in such Articles and found elsewhere in the UCC.

4.02. *Application Limited.* This Ordinance, and its application, are limited to (i) the financing transactions related to the Little River Casino Resort Expansion Project described in the Financing Documents and (ii) any other Secured Obligations, as defined in the Financing Documents. This Ordinance, or any parts thereof, shall not apply to any transaction other than those specifically listed in this section, whether by specific application or by interpretation.

#### **Section 5. Amendments for Tribal Uniform Commercial Code**

5.01. *Terms.* The following terms in the UCC shall be substituted in the Tribal UCC:

- a. “Court” shall be deleted and replaced with “Tribal Court.”
- b. “Judicial proceedings” and other forms and variations of this term shall refer to processes and proceedings in the Tribal Court, or such other court to which the parties have agreed in writing as having jurisdiction.
- c. “State” or “State of Michigan” where appropriate shall be deleted and replaced with “Tribe” or “Little River Band of Ottawa Indians.”
- d. “Secretary of State” and “filing office” shall be deleted and replaced with “Tribal Court.”

5.02. *Security Interest in Pledged Revenues.* Notwithstanding any other provision of this Ordinance or, to the extent applicable, the State UCC, the security interest in Pledged Revenues created by the Depository Agreement shall attach and be perfected in the Pledged Revenues (including with respect to any proceeds thereof) without possession by or on behalf of the Servicer, any Servicer, any Secured Payee, the Tribe and the Depository (in each case as defined in the Financing Documents), or any agent of the above, upon the receipt thereof, whether directly or indirectly, by or on behalf of the Tribe, or any agency or instrumentality of the Tribe, and shall continue while in the possession or under the control of any of the foregoing, all without the filing of any financing statement or statements.

5.03. *Financing Statements.* Notwithstanding any other provision of this Ordinance or, to the extent applicable, the State UCC, a security interest requiring the filing of a financing statement to become effective shall be sufficient, and shall remain in effect once filed without need for further renewal or extension, (a) if filed on a Form UCC-1 presently acceptable for such purposes under the State UCC and (b) if filed in the office of the Tribal Court. The Tribal Court shall cause to be maintained such records available to the public as are commercially reasonable to evidence the filing of any such financing statements (and the information therein contained) and provide notice to other creditors, and shall upon request provide copies of any financing statements filed with such court. The Tribal Court shall have no other obligation under this Ordinance.

5.04. *Applicability to Tribe as Government.* This Ordinance shall be applicable to the Tribe notwithstanding any other provisions of this Ordinance or, to the extent applicable, the State UCC.

5.05. *Location of Tribe.* Notwithstanding any other provisions of this Ordinance or, to the extent applicable, the State UCC, the Tribe and all Collateral, as defined in the Financing Documents, shall be deemed located on the Tribal reservation and on land held in trust for the Tribe by the United States.

5.06. *Remedies.* Notwithstanding any other provisions of this Ordinance or, to the extent applicable, the State UCC, prior to exercising any non-judicial remedy (other than as provided under Section 6.2 of the

Springing Depository Agreement) any secured creditor shall first notify the Tribal Police and the Tribal Court in writing of its intent to exercise non-judicial remedies.